Office-Supreme Court, U.S.
FILED
APR 10 1981
ALEXANDER L. STEVAS,
CLERK

80-1698
No.

In the Supreme Court of the United States

OCTOBER TERM, 1980

HAROLD N. BLOCH, et al.,
BERNARD BLOCH, PETITIONER,

VS.

ETHYLE BLOCH, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RICHARD DURANT
DURANT & DURANT P.C.
Attorney for Petitioner
2300 Penobscot Bldg.
Detroit, Michigan 48226
(313) 961-6800

RENAISSANCE PRINTING COMPANY, 76 W. ADAMS
9TH FLOOR, DETROIT, MICHIGAN 48226 — PHONE 964-3185

QUESTIONS PRESENTED

The issues involved in this case raise substantial questions of orderly and properly judicial administration in the Federal System which will permit U.S. District Courts and Court of Appeals for the Third Circuit to establish the same rule of law to govern all litigants equally, fairly and with certainty. It involves Federal questions under procedural due process and equal protection clause of the 14th amendment to the constitution. It involves the very important question of Jurisdiction, statutory and judicial power of the U.S. District Court of the Virgin Islands. It involves conflict of decisions within the Court of Appeals for the Third Circuit.

I

Did Judge Joseph, sitting as a Federal District Court Judge in a divorce action, exceed his statutory authority, judicial power and jurisdiction by conveying real property (not marital homestead property) and which is contrary to the statutory law of the Virgin Islands and the mandate of the Court of Appeals for the Third Circuit?

II

Did the Court of Appeals for the Third Circuit by affirming District Court Judgment (without an opinion) of conveying real property (not marital homestead property) create a conflict within its own circuit by its prior decision of disallowing the conveyance of real property, thus bringing uncertainty in the law in this area and the question of the divorce court jurisdiction unanswered?

III

Did the Court of Appeals for the Third Circuit deny Petitioner's constitutional right of due process and equal protec-

tion clause under the 14th amendment by ipso facto affirming District Court Judgment of conveying real property without rendering an opinion to the important jurisdictional question presented?

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
FEDERAL CODE INVOLVED	2
STATUTE OF VIRGIN ISLANDS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	7
APPENDIX	
Excerpts of Memorandum and Order	1a
Judgment Order, D.C. Civ. No. 31-71	4a
Judgment Order, 3rd Cir. C.A. No. 80-1243	6a
Sur Petition for Rehearing	7a

INDEX OF AUTHORITIES

CASES	PAGE
Dyndul v. *Dyndul*, 541 F2d 132 (3rd Cir 1976) . .	4
Todman v. *Todman*, 571 F2d 149 (3rd Cir 1978)	3, 4
Klaisner v. *Klaisner*, 328 NE2d 341 (1975)	5
Lopez v. *Lopez*, 112 A2d 466 (1955)	5
Victory Towing Co., Inc. v. *Bordelon*, 219 F2d 540 (1955)	5
Irish v. *United States*, 225 F2d 3 (1955)	5
State of Cal. v. *Taylor*, 353 US 553	6
Leiter Minerals, Inc. v. *U.S.*, 352 US 220	6
Fong Foo v. *U.S.*, 369 US 141	6
Magnum Import Co. v. *Coty*, 262 US 159	7
Shapiro v. *U.S.*, 235 US 412	7
Hagans v. *Lavine*, 415 US 528 (1974)	7

FEDERAL CODE	
Title 28 U.S.C. 1254(1)	2
Title 28 U.S.C. 1651(a)	2

STATUTE OF VIRGIN ISLANDS	
Title 16 V.I.C. §109(1)(2)(3)(4)	3, 4

In the Supreme Court of the United States

OCTOBER TERM, 1980

HAROLD N. BLOCH, et al.,
BERNARD BLOCH, PETITIONER,

VS.

ETHYLE BLOCH, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment rendered without an opinion of the United States Court of Appeals for the Third Circuit entered in this action on January 26, 1981.

OPINION BELOW

Excerpts Memorandum and order of the District Court entered on June 30, 1977 (see appendix page 1-3); Court of Appeals Judgment order entered May 8, 1978, no opinion (see appendix page 4-5); Court of Appeals Judgment order entered on January 26, 1981, no opinion (see appendix page

6); Sur Petition for rehearing of Court of Appeals denied was entered January 16, 1981 (see appendix page 7).

JURISDICTION

The judgment of the Court of Appeals was entered on January 26, 1981 without an opinion. The jurisdiction of this Court is invoked under Title 28 U.S.C. section 1254(1) and 28 U.S.C. section 1651(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The applicable provisions in the United States Constitution are found in the 14th amendment of procedural due process and equal protection clause.

FEDERAL CODE INVOLVED

The applicable Federal Code involved is found in Title 28 U.S.C. section 1651(a) which provides in pertinent part:

That Federal District Court may not usurpate its judicial power when it has no jurisdiction to do so.

VIRGIN ISLANDS STATUTE INVOLVED

Title 16 V.I.C. section 109 limits judicial power and jurisdictional authority of the District Court Judge to convey real property in a divorce action.

STATEMENT OF THE CASE

Judge Antoine L. Joseph, sitting by designation as a U.S. District Court Judge for the Virgin Islands in a divorce action, ordered conveyed two pieces of real estate property known as lot 22, a five unit apartment and lot 243A, an unconnected vacant lot (see excerpt of Judge Joseph's memorandum and

order appendix page 1-3). This is contrary to the laws of the Virgin Islands under Title 16 V.I.C. §109 and more importantly Judge Joseph exceeded his statutory authority, Judicial power and Jurisdiction to do so. Judge Joseph joined as necessary parties, Petitioner Bernard Bloch and others, to a divorce action between Harold Bloch (husband) and Ethyle Bloch (wife) for the sole purpose of determining ownership to lot 22 and lot 243A. Lot 22 was titled in the name of Bernard Bloch, Joan Bloch, and Rosalyn Bloch and lot 243A was titled in the name of Naruth Corporation, Bernard Bloch being majority stockholder. Judge Joseph exceeded his power to determine ownership (quiet title) of real property as a divorce judge. A divorce judge has been given specific authority and jurisdiction under the laws of the Virgin Islands Title 16 V.I.C. § 109:

1. Award custody of children.
2. Order support of children.
3. Order delivery of personal property to the wife.
4. Award alimony in gross or installments.

The Court of Appeals has mandated that a divorce judge may convey marital homestead property by the entireties.

Lot 22 is a five unit apartment in which rent is collected. Lot 243A is an unconnected vacant lot. Neither of which can be considered marital homestead property nor had the property been determined to be marital homestead property. In *Todman* v. *Todman*, 571 F2d 150 footnote 2, the Court stated that:

> "A homestead shall constitute the abode including land and building, owned by and actually occupied by a person or members of his family free of rental charge."

The U.S. District Court of the Virgin Islands in a divorce proceeding has no authority, power or jurisdiction to order a

division of real property. Authority can be granted only by statute and therefore Judge Joseph exceeded his authority, power and jurisdiction since the statute is silent as to conveying real property.

The Court of Appeals for the Third Circuit affirmed Judge Joseph's order to convey real property, see appendix page 4 and 5, contrary to its own mandate in *Dyndul* v. *Dyndul*, 541 F2d 132 (3rd Cir 1976) and *Todman* v. *Todman*, 571 F2d 149 (3rd Cir 1978).

In *Dyndul, supra,* the same Judge Joseph entered a decree granting a divorce and then made a division of real property. The Court of Appeals for the Third Circuit held that in absence of specific statutory authority to convey real property, Judge Joseph had no authority or jurisdiction to order a division of real property and reversed his order. But in case at bar the Court of Appeals affirmed Judge Joseph's order conveying real property (see appendix page 4 and 5). We now have a conflict of decision within the Court of Appeals for the Third Circuit and an usurpation of power of the District Court. The Court of Appeals for the Third Circuit went on to say that the Virgin Islands legislature has comprehensively regulated the granting of divorce in that jurisdiction. This regulation is supported in Title 16 V.I.C. §109 by which the legislature set forth, specifically and in detail, the powers of the Virgin Islands divorce court upon declaring a marriage dissolved. There is absolutely no reference made to real property, although the court has been given specific authority: (1) to award custody of children, 16 V.I.C. §109(1); (2) to order support for children, 16 V.I.C. §109(2); (3) to order delivery of personal property to the wife, 16 V.I.C. §109(3); and (4) to award alimony in gross or installments to the party in need, 16 V.I.C. §109(4). These powers have been vested in the Virgin Islands Court since 1944, and there has been no alteration of what the Court can do upon entry of a final order

of divorce. Given that history, only the legislature can broaden these long standing powers. The Third Circuit Court of Appeals in *Dyndul* quoted:

> "The parties have not cited to us, nor have we been able to find any other provision of the Virgin Islands Code dealing with division of marital property in divorce. It is the rule in the majority of American jurisdiction that the authority of divorce court to effect a division of the property, at least as to real estate, is purely statutory. See e.g. *Klaisner* v *Klaisner*, 328 NE2d 341 (1975). It is an accepted doctrine in both England and America that a court of equity in dissolving a marriage cannot divide the property of the spouses except by statutory authority. *Lopez* v *Lopez*, 112 A2d 466 (1955). Our ruling does not leave courts and parties without means to effect a distribution of property. Either party may institute a separate action in the proper jurisdiction for partition of property held as tenants in common. Additionally, where one spouse has a particular equitable interest in property, a separate equity action may be maintained to realize that interest."

The Court of Appeals for the Third Circuit has a duty to decide which of the two conflicting views prevail. There is a clear constitutional and statutory right to protect.

The Judgment order of the Court of Appeals dated May 8, 1978 should be vacated and the case remanded where the court made no findings of fact or conclusion of law and rendered no opinion, since this court cannot determine the basis for the judgment. *Victory Towing Co., Inc.* v. *Bordelon*, 219 F2d 540 (1955); *Irish* v. *United States*, 225 F2d 3 (1955).

Finding of fact should be so explicit as to give this Court a clear understanding of the basis of the Court of Appeals decision. Finding of fact must be made on every material issue.

The United States Supreme Court granted Certiorari to resolve conflict between the United States Court of Appeals and California Supreme Court as to applicability of Federal Statute (see *State of Cal.* v. *Taylor*, 353 US 553; *Leiter Minerals, Inc.* v. *U.S.*, 352 US 220.

The Supreme Court granted Certiorari to consider a question of importance as to the power of the District Court. *Fong Foo* v. *U.S.*, 369 US 141.

It is the duty of the Court of Appeals to review the judgment order of the District Court in the light of the controlling law of the Virgin Islands and the precedent laid down by the Court of Appeals in *Dyndul* and *Todman, supra.*

REASONS FOR GRANTING THE WRIT

The decision of the U.S. District Court of the Virgin Islands conveying real property constitutes a clearly erroneous usurpation of judicial power and a clear abuse of discretion.

When the Federal District Court has no judicial power to do what it purports to do, when its action is not mere error, but usurpation of power, a writ may be issued to confine an inferior court to a lawful exercise of its prescribed jurisdiction.

Jurisdiction to bring up cases by Writs of Certiorari to the Court of Appeals was conferred upon U.S. Supreme Court for two purposes:

1. To secure uniformity of decision between the Court of Appeals and within its own circuit.

2. To bring up questions of importance which is of public interest (see *Magnum Import Co.* v. *Coty*, 262 US 159).

Grounds for granting Certiorari are:

1. Conflict among the Federal Courts of different circuits.

2. Conflict between decision of state court and federal court.

3. Conflict between the Court of Appeals Circuit by a prior decision. *Shapiro* v. *U.S.*, 235 US 412.

In *Hagans* v. *Lavine*, 415 U.S. 528(1974) the jurisdictional question was so important that the Supreme Court granted Certiorari to review Judgment of U.S. Court of Appeals and ruled that it lacked jurisdiction as being violative of equal protection clause of the 14th amendment.

Since the District Court misconceived the applicable law of the Virgin Islands, this Court can review the Judgment of the District Court in the light of the controlling Virgin Islands law. The lack of an opinion by the Court of Appeals precludes any proper appraisal of the basis for its decision.

Petitioner is not trying to control the decision of the District Court, but rather merely confine the lower court to the sphere of its discretionary power. It should be very important to view the failure of the Court of Appeals to supply any reasonable justification of its action. Without an opinion from the Court of Appeal, Petitioner does not know what role, if any, played in the decision below.

CONCLUSION

Petitioner prays that the judgment of the District Court be vacated and remand the case to the Court of Appeals for further deliberation on the jurisdictional question in order to

have a uniformity of decisions within the District Court and Court of Appeals and Law of the Virgin Islands.

Respectfully submitted,

RICHARD DURANT
Durant & Durant, P.C.
Attorney for Petitioner
2300 Penobscot Building
Detroit, Michigan 48226
(313) 961-6800

April 7, 1981

APPENDIX

EXCERPTS OF MEMORANDUM AND ORDER

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ETHYLE BLOCH,
Plaintiff

vs.

HAROLD BLOCH, BERNARD BLOCH, JOAN BLOCH, ROSALYN BLOCH, NARUTH CORP. and THE BANK OF NOVA SCOTIA,
Defendants

CIVIL NO. 71/31

ACTION FOR DIVORCE, CUSTODY AND SUPPORT OF CHILD

THOMAS ALKON, ESQ.
Isherwood, Colianni, Alkon & Barnard, Esqs.
46 King Street
Christiansted, St. Croix
— For Plaintiff

ALBERT A. SHEEN, ESQ.
Hodge & Sheen, Esqs.
46-47 Company Street
Christiansted, St. Croix
— For Defendant Naruth Corportion

ROBERT H. RUSKIN, ESQ.
46 King Street
Christiansted, St. Croix
— For Defendant Bank of Nova Scotia

BERNARD BLOCH, pro se
18586 Capitol Drive
Southfield, Michigan 48075

JOSEPH, District Judge
Sitting by Designation

This matter came on for hearing April 22, 1977, on plaintiff's motion to enforce this Court's order of June 6, 1975, by requiring the defendant, Harold Bloch, to convey to the plaintiff, Ethyle Bloch, his former wife, his ownership in Plot No. 22 Estate Golden Rock, St. Croix, and Lot 243A Estate Golden Rock, St. Croix.[1]

Prior to hearing, the Court required plaintiff to serve a summons and a copy of said motion upon all named defendants so that each of the parties could assert any claim it might have regarding title to the subject properties. Defendant Naruth Corporation is the record title holder of Lot 243A Estate Golden Rock. Defendants Bernard Bloch, Joan Bloch and Rosalyn Bloch are the record title holders of Plot No. 22 Estate Golden Rock. Defendant Bank of Nova Scotia holds a first mortgage on Plot No. 22 Estate Golden Rock. All defendants were properly served.

Plaintiff appeared personally and by her attorneys, Isherwood, Colianni, Alkon and Barnard (Thomas Alkon, Esquire, of counsel). The Bank of Nova Scotia appeared through its attorney, Robert Ruskin. Defendant Harold Bloch failed to appear. Bernard Bloch appeared pro se.

---

[1] The order of June 6 awarded plaintiff alimony in gross of $100,000. Defendant was ordered as of that date to pay the money forthwith or to deed the above-numbered plots to plaintiff. An appeal to the Third Circuit was dismissed.

Rosalyn Bloch and Joan Bloch failed to appear. Naruth Corporation, through counsel Albert Sheen, Esquire, filed a special appearance for the purpose of attacking the Court's personal jurisdiction over Naruth Corporation.

Defendant Naruth Corporation, through counsel, argued that it had not properly been served and that the Court lacked personal jurisdiction over Naruth Corporation. The Court, noting that Naruth Corportion had been properly served by publication pursuant to a previous order of the Court, overruled the contention of Naruth Corporation that it was not properly before the Court. Counsel for Naruth Corporation then withdrew from the case.

The Court then heard testimony regarding the ownership of Lot 243A Estate Golden Rock.

ORDER

For the reasons stated in the foregoing memorandum, it is hereby

ORDERED that defendant Harold Bloch execute good and valid deeds conveying to plaintiff Ethyle Bloch all right, title and interest to Plot No. 22 Estate Golden Rock, St. Croix, and Lot 243A Estate Golden Rock, St. Croix, within 30 days from the date of the entry of this order; and it is further

ORDERED that if defendant Harold Bloch fails to execute such deeds, a Clerk of this Court, pursuant to this order, shall execute such deeds to conform to the order of this Court.

Dated this 30th day of June, 1977.

(s) Antoine L. Joseph
Judge
Sitting by Designation

JUDGMENT ORDER

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 77-2073

ETHEL BLOCH
vs.
HAROLD N. BLOCH, ET AL

HAROLD BLOCH, BERNARD BLOCH, JOAN BLOCH,
ROYALYN BLOCH, and NARUTH CORP.

Appellants

(D.C. Civil No. 31-71)

ON APPEAL FROM THE DISTRICT OF THE
VIRGIN ISLANDS
DIVISION OF ST. CROIX

Submitted Under Third Circuit Rule 12(6)
April 25, 1978
Before GIBBONS, GARTH, and HIGGENBOTHAM,
Circuit Judges

Thomas Alkon, Esquire
Isherwood, Colianni, Alkon and Barnard
46 King Street
Christiansted, St. Croix,
Virgin Islands 00820
Attorney for Appellee Ethel Bloch

Thomas Periera, Esquire
24700 Northwestern Highway
Suite 400
Southfield, Michigan 48075
Attorney for Harold Bloch, Joan Bloch,
Dorothy Bloch, Rosalyn Bloch & Naruth Corp.

Bernard Bloch, Pro Se
326 Lakewood Drive
Bloomfield Hills, Michigan 48013

Appellants Harold N. Bloch, Bernard Bloch, Joan Bloch, Rosalyn Bloch, and Naruth Corporation appeal from an order of the District Court of the Virgin Islands ordering that Harold Bloch, owner of Plot 22, Estate Golden Rock, St. Croix, and Lot 243A, Estate Golden Rock, St. Croix, convey said properties to Ethel Bloch, in lieu of paying her $100,000 alimony in gross. The court had jurisdiction over the parties, its findings of fact are not clearly erroneous, and we find no legal error.

It is therefore ORDERED and ADJUDGED that the judgment of the district court is affirmed. Costs to be taxed in favor of appellee.

By the Court,

(s) John J. Gibbons
Circuit Judge

Attest

(s) Thomas F. Quinn
Clerk

Dated: May 8, 1978.

Certified as a true copy and issued in lieu of a formal mandate on July 11, 1978.

Test:
Clerk, United States Court of Appeals
for the Third Circuit

JUDGMENT ORDER

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 80-1243

ETHEL BLOCH
v.
HAROLD N. BLOCH, et al
BERNARD BLOCH, Appellant

ON APPEAL FROM THE DISTRICT COURT OF THE VIRGIN ISLANDS, DIVISION OF ST. CROIX
(CIVIL NO. 71-0031)

Submitted Under Third Circuit Rule 12(6)
December 12, 1980
BEFORE: SEITZ, *Chief Judge*, GIBBONS and ROSENN, *Circuit Judges*

After consideration of the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

(s) Seitz
Chief Judge

Attest:

Sally Mrvos
Clerk

DATED: December 18, 1980.

Certified as a true copy and issued in lieu of a formal mandate on January 26, 1981.

Test: SALLY MRVOS

Clerk, United States Court of Appeals for the Third Circuit

SUR PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 80-1243

ETHEL BLOCK

v.

HAROLD N. BLOCH, et al.

BERNARD BLOCH, Appellant

ON APPEAL FROM THE DISTRICT COURT OF THE VIRGIN ISLANDS, DIVISION OF ST. CROIX

(Civil No. 71-0031)

Present: SEITZ, Chief Judge, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, Circuit Judges.

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in bane, the petition for rehearing is denied.

By the Court,

(s) Seitz
Chief Judge

Dated: January 16, 1981.